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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,437	11/20/2003	Tomaso Vercellotti	PIEZ-01000US0	6624
28554 7590 07/22/2008 VIERRA MAGEN MARCUS & DENIRO LLP 575 MARKET STREET SUITE 2500 SAN FRANCISCO, CA 94105				
EXAMINER				
PATEL, NIHIL B				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
07/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/716,437

Applicant(s)

VERCELLOTTI ET AL.

Examiner

NIHIR PATEL

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04.24.2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 18, 19, 21 and 24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 9, 18, 19, 21 and 24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on April 28th, 2008 have been fully considered but they are not persuasive. The applicant argues that Nowak, Loschilov et al. and/or Gault singly, or in combination disclose "a first chisel tip having vibration modulated with low frequency pulses". The examiner disagrees with the applicant's argument. Loschilov does disclose "a first chisel tip having vibration modulated with low frequency pulses" (see col. 4 lines 44-46; the applicant defines low frequency in the range of 6-40 kHz in the specification; whereas the frequency in the reference is 26.5 kHz; implying that it is low frequency pulses).

Response to Amendment

2. The examiner acknowledges and accepts the amendment of the first paragraph of the specification entitled "CROSS REFERNECE TO RELATED APPLICATIONS" filed on April 24th, 2008.
3. The examiner also acknowledges the amendment filed on April 24th, 2008. The amendment comprises cancellation of claims 1-8, 10-17, 20, 22 and 23 and amendment to claims 9, 18 and 24.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims **9, 19, 21 and 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nowak (US 5,997,298) in view of Loschilov et al. (US 4,188,952) and further in view of Gault (US 6,149,434).

7. **As to claims 9, 19, 21 and 24**, Nowak substantially teaches a method step of creating a horizontal crestal incision on an edentulous ridge by means of a first chisel tip (**see figure 1 and column 2 lines 25-35; the tip has a crestal shape inherently indicating that a crestal incision will be made**), widening the incision, by means of a second chisel tip (**see figure 1 and column 2 lines 25-35**), creation of at least one implant site on the bottom of the widened horizontal crestal incision, by means of an osteotome tip and positioning of implant in the implant sites respectively (**see figure 1 and column 2 lines 25-35**), but does not disclose the first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound or measuring of the edentulous ridge, prior/after positioning the implants in the implant sites, using a periodontal probe, and a first chisel tip having vibration modulated with low frequency pulses. Loschilov teaches an apparatus that does provide a first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound (**see abstract**) and a first chisel tip having vibration modulated

with low frequency pulses (**see col. 4 lines 44-46; see response to argument above**) and Gault teaches a method step of measuring of the edentulous ridge, prior/after positioning the implants in the implant sites, using a periodontal probe (**see column 7 lines 45-55**). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nowak's invention by providing a first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound in order to obtain an extremely precise and fine incision as taught by Loschilov and measuring of the edentulous ridge, prior/after positioning the implants in the implant sites, using a periodontal probe in order to provide a perfect fit as taught by Gault.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nowak (US 5,997,298) in view of Loschilov et al. (US 4,188,952) and further in view of Linkow (US 4,702,697). Nowak substantially teaches a method step of creating a horizontal crestal incision on an edentulous ridge by means of a first chisel tip (**see figure 1 and column 2 lines 25-35; the tip has a crestal shape inherently indicating that a crestal incision will be made**), widening the incision, by means of a second chisel tip (**see figure 1 and column 2 lines 25-35**), creation of at least one implant site on the bottom of the widened horizontal crestal incision, by means of an osteotome tip and positioning of implant in the implant sites respectively (**see figure 1 and column 2 lines 25-35**), but does not disclose the first chisel tip, second chisel tip; the osteotome tip being operated by ultrasound or wherein the horizontal incision includes a mesial releasing incision; a distal releasing incision and a first chisel tip having vibration modulated with low frequency pulses. Loschilov teaches an apparatus that does provide a first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound (**see abstract**) and a first chisel tip having vibration modulated with low frequency pulses (**see col. 4 lines 44-46; see response to**

argument above) and Linkow teaches a method step of providing a horizontal incision includes a mesial releasing incision and a distal releasing incision (**see claim 6**). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nowak's invention by providing a first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound in order to obtain an extremely precise and fine incision as taught by Loschilov and providing a horizontal incision includes a mesial releasing incision and a distal releasing incision in order to provide a perfect fit as taught by Linkow.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772